

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	DOCKET NO.
	)	0511431
JOSE RIVERA, Jr.,	)	
<u>Defendant</u>	)	

**MEMORANDUM IN SUPPORT OF MOTION FOR A  
SENTENCING REHEARING**

In the instant case the defendant Jose Rivera Jr. was indicted by a Grand Jury in the District of Massachusetts and charged in one count of an indictment with conspiracy to distribute cocaine base. In counts II and III he was also charged with distribution of cocaine base and adding and abetting. The defendant pleaded guilty before the Court, Woodlock J. and was sentenced to 10 years.

Subsequent to his sentence, the United States Supreme Court decided *Blakely v. Washington*, 124 S. Ct. 2531 (2004). This memorandum is being supplied by the defendant in order to persuade the Court to allow his motion for a rehearing and to resentence him based upon a proper calculation of the amount of drugs involved in this case.

At the time of his sentencing, a presentence report was prepared by the Probation Office of this Court. In part, the probation officer found that the defendant was accountable for 66.2 grams of cocaine base which had a marijuana equivalency of 1,388 kilograms. (See paragraph 68 of the presentence report). Additionally, in paragraph 68A of the same presentence report the probation officer found and

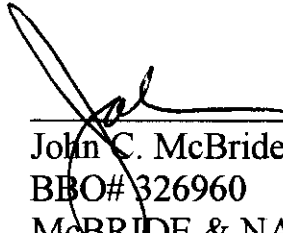
the court adopted a calculation that the defendant was accountable for an estimated 14 grams of cocaine powder with a marijuana equivalency of 2.8 kilograms. The Probation Department found he allegedly distributed it on August 30<sup>th</sup>, 2002. In total, the Probation Department found that the defendant was accountable for the equivalent of 1,343.6 kilograms of marijuana.

The defendant entered into a plea agreement with the government. At that time of his sentencing he took a different position than the Probation Department with respect of the amount of drugs involved. However, he did not seek a jury trial or otherwise contest that amount.

Because this Court erroneously found his base offense level to be 32 and, properly adjusted it downward for his acceptance of responsibility, the Court sentenced the defendant to 10 years. Since Blakely, supra there should be a rehearing so the defendant can have a valuable opportunity to contest drug quantity.

Respectfully submitted,

Dated: July 28, 2005



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**CERTIFICATE OF SERVICE**

I, John C. McBride, counsel for the within named Defendant hereby certifies under the pains and penalties of perjury I have mailed a copy, first class, of the attached document to the following individual(s):

U.S. District Attorney's Office  
Attn: John Wortmann, AUSA  
Fax: (617) 748 3965

United States District Court  
Attn: Rebecca Greenberg, Courtroom Clerk  
On Courthouse Way  
Suite 4110  
Boston, MA 02210

  
\_\_\_\_\_  
John C. McBride

Dated: July 28, 2005